

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JAMES LEE HENDERSON,	§	
TDCJ No. 651826,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION H-05-3160
	§	
Capt. BILLY HUNTISON, <i>et al.</i> ,	§	
	§	
Defendants.	§	

DISMISSAL ORDER

Plaintiff James Lee Henderson is a prisoner in the Texas Department of Criminal Justice-Correctional Institutions Division. He filed a complaint under 42 U.S.C. § 1983. He sues Captain Billy Huntison, Lt. Bill Roberts, and Sgt. Duffy Sutton. He claims these three Defendants used excessive force against him on April 15, 2005, at 10:15 a.m. in the Estelle Unit. In a prior action filed and currently pending in this Court, Plaintiff made the same claim concerning the same incident. *See TDCJ-ID, et al.*, Civil Action No. H-05-3006 (August 8, 2005). Although Plaintiff names more Defendants in the prior case, the description of the incident precisely matches the incident underlying the complaint here.

Duplicative or repetitive claims already litigated are malicious under 28 U.S.C. § 1915A(b)(1). *See, e.g., Hill v. Estelle*, 423 F. Supp. 690 (S.D. Tex. 1975). Actions that duplicate pending lawsuits are also malicious and therefore dismissible. *Pittman*

v. Moore, 980 F.2d 994, 995 (5th Cir. 1993). This action is duplicative of Plaintiff's prior action filed in this Court, and is therefore malicious under 28 U.S.C. § 1915A(b)(1).

It is accordingly ORDERED that this complaint be DISMISSED under 28 U.S.C. § 1915A(b)(1) as malicious. All other pending motions and requests for relief are DENIED.

The Clerk will send a copy of this order to the District Clerk for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas 75702, Attention: Betty Parker.

SIGNED at Houston, Texas, on this 16th day of September, 2005.



DAVID HITTNER

United States District Judge